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Message Text

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ACTION IO-14

INFO OCT-01 EUR-25 NEA-10 ISO-00 SY-10 USSS-00 DOTE-00

IOE-00 SSO-00 NSCE-00 USIE-00 INRE-00 CIAE-00 DODE-00

PM-07 H-03 INR-10 L-03 NSAE-00 NSC-10 PA-03 RSC-01

PRS-01 SPC-03 SS-15 ACDA-19 CAB-09 COME-00 EB-11

FAA-00 DRC-01 /156 W
---------- 007537
O R 191600Z SEP 73
FM AMEMBASSY ROME
TO SECSTATE WASHDC IMMEDIATE 0860
INFO AMEMBASSY LONDON
AMEMBASSY MOSCOW
AMEMBASSY PARIS
AMEMBASSY TEL AVIV
AMCONSUL MONTREAL
USUN NEW YORK 1731

UNCLAS SECTION 1 OF 2 ROME 09889

E.O. 11652: N/A
TAGS: ICAO, ETRN
SUBJ: ICAO AIR SECURITY CONFERENCE: DRAFT CONVENTION

PLS PASS LITTELL/CAB: DRISCOLL/DOT; STEWART/FAA

MONTREAL FOR US REP ICAO

1. FOLLOWING IS TEXT OF DRAFT CONVENTION SENT TO CONFERENCE WORKING GROUP SEPT. 18. IN LIGHT COMMENTS BEING SENT SEPTEL, CONSIDERATION OF TEXT UNLIKELY.

BEGIN TEXT

ARTICLE 1

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ANY STATE PARTY TO THIS CONVENTION WHICH CONSIDERS THAT AN OFFENCE MENTIONED IN ARTICLE 2 HAS BEEN COMMITTED AND THAT A STATE

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(1) HAS FAILED TO FACILITATE THE CONTINUATION OF THE JOURNEY
OF THE PASSENGERS OR THE CREW OF THE AIRCRAFT AS
SOON AS PRACTICABLE; OR

(2) HAS FAILED TO RETURN WITHOUT DELAY THE AIRCRAFT OR ITS
CARGO TO THE PERSONS LAWFULLY ENTITLED TO POSSESSION THEREOF; OR

(3) HAS FAILED TO TAKE ALL APPROPRIATE MEASURES TO RESTORE
CONTROL OF THE AIRCRAFT TO ITS LAWFUL COMMANDER OR TO PRE-
SERVE HIS CONTROL OF THE AIRCRAFT; OR

(4) HAS NOT, DESPITE BEING SATISFIED THAT THE CIRCUMSTANCES
SO WARRANT, TAKEN A PERSON WHO IS ALLEGED TO HAVE COMMITTEED
AN OFFENCE MENTIONED IN ARTICLE 2 AND WHO IS PRESENT IN ITS TE-
RRITORY, INTO CUSTODY OR TAKEN OTHER MEASURES TO ENSURE HIS
PRESENCE; OR

(5) HAS NEITHER EXTRADITED A PERSON ALLEGED TO HAVE COMMITTED
AN OFFENCE MENTIONED IN ARTICLE 2 WHO IS PRESENT IN ITS TERRITORY,
NOR SUBMITTED THE CASE TO ITS COMPETENT AUTHORITIES FOR THE
PURPOSE OF PROSECUTION; OR

(6) HAS SUBMITTED THE CASE TO ITS COMPETENT AUTHORITIES
FOR THE PURPOSE OF PROSECUTION, BUT THESE AUTHORITIES HAVE
NOT TAKEN THEIR DECISION IN THE SAME MANNER AS IN THE CASE
OF ANY ORDINARY OFFENCE OF A SERIOUS NATURE UNDER THE LAW
OF THAT STATE,

MAY REQUEST THE SECRETARY GENERAL OF THE INTERNATIONAL CIVIL
AVIATION ORGANIZATION TO CONVENE IMMEDIATELY THE COUNCIL OF THAT
ORGANIZATION IN ORDER TO CONSIDER THE MATTER IN ACCORDANCE WITH
ARTICLES 6 AND 7.

ARTICLE 2

AN OFFENCE REFERRED TO IN ARTICLE 1 HAS BEEN COMMITTED WHEN
A PERSON
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(1) ON BOARD AN AIRCRAFT IN FLIGHT

(A) UNLAWFULLY BY FORCE OR THREAT THEREOF, OR BY ANY OTHER FORM
OF IMTIMIDATION, SEIZES, OR EXERCISES CONTROL OF, THAT AIRCRAFT
OR ATTEMPTS TO PERFORM ANY SUCH ACT; OR

(B) IS AN ACCOMPLICE OF A PERSON WHO PERFORMS OR ATTEMPTS TO
PERFORM ANY SUCH ACT; OR

(2) UNLAWFULLY AND INTENTIONALLY

(A) PERFORMS AN ACT OF VIOLENCE AGAINST A PERSON ON BOARD AN
AIRCRAFT IN FLIGHT IF THAT ACT IS LIKELY TO ENDANGER THE SAFETY

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OF THAT AIRCRAFT; OR

(B) DESTROYS AN AIRCRAFT IN SERVICE OR CAUSES DAMAGE TO SUCH AN AIRCRAFT WHICH RENDERS IT INCAPABLE OF FLIGHT OR WHICH IS LIKELY TO ENDANGER ITS SAFETY IN FLIGHT; OR

(C) PLACES OR CAUSES TO BE PLACED ON AN AIRCRAFT IN SERVICE, BY ANY MEANS WHATSOEVER, A DEVICE OR SUBSTANCE WHICH IS LIKELY TO DESTROY THAT AIRCRAFT, OR TO CAUSE DAMAGE TO IT WHICH RENDERS IT INCAPABLE OF FLIGHT, OR TO CAUSE DAMAGE TO IT WHICH IS LIKELY TO ENDANGER ITS SAFETY IN FLIGHT; OR

(D) DESTROYS OR DAMAGES AIR NAVIGATION FACILITIES OR INTERFERES WITH THEIR OPERATION, IF ANY SUCH ACT IS LIKELY TO ENDANGER THE SAFETY OF AIRCRAFT IN FLIGHT; OR

(E) COMMUNICATES INFORMATION WHICH HE KNOWS TO BE FALSE, THEREBY ENDANGERING THE SAFETY OF AN AIRCRAFT IN FLIGHT; OR

(3) ATTEMPTS TO COMMIT ANY OF THE OFFENCES MENTIONED IN PARAGRAPH 2 OF THIS ARTICLE,OR IS AN ACCOMPLICE OF A PERSON WHO COMMITS OR ATTEMPTS TO COMMIT ANY SUCH OFFENCE.

ARTICLE 3

ANY STATE PARTY TO THIS CONVENTION WHICH CONSIDERS THAT A STA-
TE ... (INSERT PROVISIONS ON STATE ACTS, E.G. THAT FOUND IN
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A20-WP/28 ARTICLE 79 17-534 MAY LIKEWISE REQUEST THE SECRETARY GENERAL TO CONVENE IMMEDIATELY THE COUNCIL IN ORDER TO CONSIDER THE MATTER, IN ACCORDANCE WITH ARTICLES 6 AND 7.

ARTICLE 4

FOR THE PURPOSE OF THIS CONVENTION,

(A) AN AIRCRAFT IS CONSIDERED TO BE IN FLIGHT AT ANY TIME FROM THE MOMENT WHEN ALL ITS EXTERNAL DOORS ARE CLOSED FOLLOWING EMBARKATION UNTIL THE MOMENT WHEN ANY SUCH DOOR IS OPENED FOR DISEMBARKATION; IN THE CASE OF A FORCED LANDING, THE FLIGHT SHALL BE DEEMED TO CONTINUE UNTIL THE COMPETENT AUTHORITIES TAKE OVER THE RESPONSIBILITY FOR THE AIRCRAFT AND FOR PERSONS AND PROPERTY ON BOARD;

(B) AN AIRCRAFT IS CONSIDERED TO BE IN SERVICE FROM THE BEGIN-
NING OF THE PREFLIGHT PREPARATION OF THE AIRCRAFT BY GROUND PERSONNEL OR BY THE CREW FOR A SPECIFIC FLIGHT UNTIL TWENTY-
FOUR HOURS AFTER ANY LANDING; THE PERIOD OF SERVICE SHALL, IN ANY EVENT, EXTEND FOR THE ENTIRE PERIOD DURING WHICH THE AIRCRAFT IS IN FLIGHT AS DEFINED IN PARAGRAPH (A) OF THIS ARTICLE.

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ARTICLE 5

1. THIS CONVENTION SHALL NOT APPLY TO AIRCRAFT USED IN MILITARY CUSTOMS OR POLICE SERVICES.

BRACKET 2. (FOOTNOTE -- SEE END OF TEXT) IN THE CASES CONTEMPLATED IN PARGRAPH(1) AND IN SUBPARAGRAPHS (A), (B), (C), AND (E) OF PARAGRAPH (2) OF ARTICLE 2, THIS CONVENTION SHALL APPLY, IRRESPCTIVE OF WHETHER THE AIRCRAFT IS ENGAGED IN AN INTERNATIONAL OR DOMESTIC FLIGHT, ONLY IF

(A) THE PLACE OF TAKE-OOF OR LANDING, ACTUAL OR INTENDED, OF THE AIRCRAFT IS SITUATED OUTSIDE THE TERRITORY OF THE STATE OF REGISTRATION OF THAT AIRCRAFT; OR

(B) THE OFFENCE IS COMMITTED IN THE TERRITORY OF A STATE OTHER THAN THE STATE OF REGISTRATION OF THE AIRCRAFT.

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3. NOTWITHSTANDING PARAGRAPH 2 OF THIS ARTICLE, IN THE CASES CONTEMPLATED IN PARAGRAPH (1) AND IN SUBPARAGRAPHS (A), (B), (C), AND (E) OF PARAGRAPH (2) OF ARTICLE 2, THE PROVISIONS OF PARAGRAPHS (4), (5) AND (6) OF ARTICLE 1 SHALL APPLY IF THE OFFENDER OR THE ALLEGED OFFENDER IS FOUND IN THE TERRITORY OF A STATE OTHER THAN THE STATE OF REGISTRATION OF THE AIRCRAFT.

4. WITH RESPECT TO STATES WHICH HAVE ESTABLISHED JOINT AIR TRANSPORT OPERATING ORGANIZATIONS OR INTERNATIONAL OPERATING AGENCIES, WHICH OPERATE AIRCRAFT WHICH ARE SUBJECT TO JOINT OR INTERNATIONAL REGISTRATION, AND IN THE CASES MENTIONED IN .....

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ACTION IO-14

INFO OCT-01 EUR-25 NEA-10 ISO-00 SY-10 USSS-00 DOTE-00

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FAA-00 DRC-01 /156 W
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TO SECSTATE WASHDC IMMEDIATE 0861
INFO AMEMBASSY LONDON
AMEMBASSY MOSCOW
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MONTREAL FOR US REP ICAO

.....IN PARAGRAPH (1) AND IN SUBPARAGRAPHS (A), (B), (C) AND
(E) OF PARAGRAH (2) OF ARTICLE 2, THIS CONVENTION SHALL NOT APPLY
IF THE PLACED REFERRED TO IN SUBPARAGRAPH (A) OF PARAGRAPH 2 OF
THIS ARTICLE ARE SITUATED WITHIN THE TERRITORY OF THE SAME STATE
WHERE THAT STATE IS ONE OF THOSE STATES WHICH HAVE ESTABLISHED
JOINT AIR TRANPORT OPERATION ORGANIZATIONS OR INTERNATIONAL OPERA-
TING AGENCIES, UNLESS THE OFFENCE IS COMMITTED OR THE OFFENDER
OR ALLEGED OFFENDER IS FOUND IN THE TERRITORY OF A STATE OTHER THAN
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THAT STATE.

5. IN THE CASES COMTEMPLATED IN SUBPARAGRAPH (D) OF PARAGRAPH
(2) OF ARTICLE 2, THIS CONVENTION SHALL APPLY ONLY IF THE AIR
NAVIGATION FACILITIES ARE USED IN INTERNATIONAL AIR NAVIGATION.

6. THE PROVISIONS OF PARAGRAPHS 2, 3, 4 AND 5 OF THIS ARTICLE
SHALL ALSO APPLY IN THE CASES CONTEMPLATED IN PARAGRAPH (3)
OF ARTICLE 2. END BRACKET

ARTICLE 6

1. WHEN THE COUNCIL OF THE INTERNATIONAL CIVIL AVIATION OR-
GANIZATION HAS BEEN CONVENED IN ACCORDANCE WITH ARTICLES 1 OR
3, IT SHALL CONSIDER THE FACTS OF THE CASE BROUGHT BEFORE IT ON
THE BASIS OF DOCUMENTS AND OTHER EVIDENCE AVAILABLE TO IT.
THE SATE WHICH IS ALLEGED TO HAVE ACTED IN A MANNER DEXCRIBED
IN ARTICLES 1 AND 3 AS WELL AS THE STATE WHICH MADE THE REQUEST IN
ACCORDANCE WITH ARTICLES 1 OR 3 MAY PARTICIPATE, WITHOUT A VOTE,
IN THE MEETINGS OF THE COUNCIL.

2. IF THE STATE WHICH IS ALLEGED TO HAVE ACTED IN A MANNER
DESCRIBED IN ARTICLES 1 OR 3 IS A PARTY TO THIS CONVENTION, OF
IF THAT STATE CONSENTS THERETO, THE COUNCIL MAY APPOINT A COMMI-

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SSION OF EXPERTS WHICH SHALL INVESTIGATE THE CASE AND DETERMINE THE FACTS. THE COMMISSION OF EXPERTS SHALL SUBMIT A REPORT ON ITS FINDINGS TO THE COUNCIL WITHOUT DELAY. THE REPORT SHALL BE MADE AVAILABLE TO STATES CONCERNED, TO ALL STATES PARTIES TO THIS CONENTION AND TO ALL STATES MEMBERS OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION BRACKET AND THE STATE WHICH IS ALLEGED TO HAVE ACTED IN A MANNER DESCRIBED IN ARTICLES 1 OR 3. END BRACKET

ARTICLE 7

IF THE COUNCIL IS SATISFIED

(1) THAT ONE OF THE OFFENCES MENTIONED IN ARTICLE 2 HAS BEEN COMMITTED AND THAT THE STATE WHICH IS ALLEGED TO HAVE ACTED IN A MANNER DEXRIBED IN ARTICLE 1 HAS ACTED IN SUCH MANER, OR

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(2) THAT A STATE HAS ACTED IN THE MANNER DEXCRIBED IN ARTICLE 3,

(3) THE COUNCIL MAY RECOMMEND TO THAT STATE TO TAKE APPROPRIATE MEASURES TO REMEDY THE SITUATION. THE FINDINGS OF THE COUNCIL AS WELL AS ANY RECOMMENDATION ADOPTED BY ITS SHALL BE MADE AVAILABLE TO ALL THE STATES REFERRED TO IN PARAGRAPH 2 OF ARTICLE 6.

ARTICLE 8

1. IF THE COUNCIL HAS MADE A RECOMMENDATION IN ACCORDANCE WITH ARTICLE 7 TO A STATE PARTY TO THIS CONVENTION AND THIS RECOMMENDATION HAS NOT BEEN COMPLIED WITH BY SUCH STATE WITHIN THE TIME-LIMIT FIXED BY THE COUNCIL, OR IF THE COUNCIL HAS FAILED TO MAKE ANY FINAL DETERMINATION WITH REGARD TO THE CASE WITHIN /SIX/MONTHS/ FROM THE DATE ON WHICH THE REQUEST WAS SUBMITTED IN ACCORDANCE WITH ARTICLES 1SOR 3, THE SECRETARY GENERAL OF THE INTERNATIONAL DIVIL AIVATION ORGANIZATION SHALL, AT THE REQUEST OF ANY STATE PARTY TO THIS CONVENTION, CONVENE A CONFERENCE OF ALL THE STATES PARTIES TO THIS CONVENTION AS SOON AS PRAC-TICABLE.

2. THE CONFERENCE SHALL CONSIDER THE FACTS OF THE CASE ON THE BASIS OF DOCUMENTS AND OTHER EVIDENCE AVAILABLE TO IT.

3. IF THE CONFERENCE IS SATISFIED

(1) THAT ONE OF THE OFFENCES MENTIONED IN ARTICLE 2 HAS BEEN COMMITTED AND THAT THE STATE WHICH IS ALLEGED TO HAVE ACTED IN A MANNER DESCRIBED IN ARTICLE 1 HAS ACTED IN SUCH MANNER, OR

(2) THAT A STATE HAS ACTED IN THE MANNER DESCRIBED IN ARTICLE 3,

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(3) THE CONFERENCE MAY RECOMMEND TO THAT STATE TO TAKE APPORPRI-
ATE MEASURES TO REMEDY THE SITUATION.

4. /INSERT PROVISION ON RECOMMENDATION TO STATES PARTIES TO
THIS CONVENTION NOT ALLEGED TO BE IN DEFAULT/.

5. THE FINDINGS OF THE CONFERENCE AS WELL AS ANY RECOMMENDATION
ADOPTED BY IT SHALL BE MADE AVAILABLE TO ALL THE STATES
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REFERRED TO IN PARAGRAPH 2 OF ARTICLE 5.

6. THE CONFERENCE SHALL IN ALL MATTERS OF SUBSTANCE ACT BY
A TWO-THIRDS MAJORITY OF STATES PRESENT AND VOTING.

ARTICLE 9

NOTHING IN THIS CONVENTION SHALL PREVENT THE PRESIDENT OF
THE COUNCIL OF THE INTERNATIONAL CIVIL AVIATION ORGANIZATION
FROM USING HIS GOOD OFFICES AND FROM INVITING THE STATES
CONCERNED TO TAKE ALL NECESSARY STEPS TO BRING ABOUT A SATIS-
FACTORY SOLUTION.

FOOTNOTE:

THE DRAFTING COMMITTEE IS INVITED TO CONSIDER THE APPROPRIATENESS
OF INCLUDING PARAGRAPH 2-6, THE WORKING OF WHICH IS TAKEN FROM
THE HAGUE AND MONTREAL CONVENTIONS. END TEXT.VOLPE

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